A. THE COMMON-LAW RULE AGAINST ACCUMULATIONS

A DIRECTION to accumulate is a provision in an instrument limiting interests in property, usually by way of trust, that income shall be added to principal so as to increase the corpus.\textsuperscript{472} If Andrew Baker bequeathes property to James Thorpe upon trust to add the income received during the life of John Stiles to the principal and, upon the death of John, to pay the accumulated fund to the children of John who survive him, an accumulation is directed. A direction to use income to preserve, as distinguished from increase, the principal is not a provision for an accumulation. Thus a provision in a trust instrument that income shall be used to pay taxes, rent, or repair costs, or to replace such a wasting asset as a valuable lease or a mine, is not a direction to accumulate.\textsuperscript{473} But a provision for use of income in a manner which will increase the original principal, as by payment of an existing mortgage on the trust property, paying premiums on an insurance policy on the life of the settlor which is an asset of the trust, or treating stock dividends as principal, is a direction to accumulate,\textsuperscript{474} as is a provision that part of the income


\textsuperscript{473} PROPERTY RESTATEMENT, §439, Comments a., d., j., (1944).

\textsuperscript{474} Simes, “Statutory Restrictions on the Accumulation of Income,” 7 UNIV. OF CHICAGO L. REV. 409 at 417 (1940); PROPERTY RESTATEMENT, §439, Comments f., g., h. (1944).
shall be paid to the beneficiaries and part added to the principal.

If the completion of an accumulation is a condition precedent to the interests of its beneficiaries and it may not be accomplished within the period of the Rule Against Perpetuities, those interests are void by virtue of the normal operation of the Rule as a rule against remoteness of vesting.\footnote{Lord Southampton v. Marquis of Hertford, 2 V.&B. 54, 35 Eng. Rep. 239 (1813); Gray, Rule Against Perpetuities, 3rd ed., §§671, 677 (1915); 2 Simes, Law of Future Interests, §587 (1936); Leach & Tudor, "The Common Law Rule Against Perpetuities," 6 American Law of Property, §§24.42, 24.65 (1952).} If Andrew Baker bequeaths $100,000 to James Thorpe upon trust to add income to principal until the fund reaches $1,000,000 and to pay the accumulated fund to the issue of John Stiles then in being, the limitation to the issue of John is void because they may not be ascertainable within lives in being and twenty-one years. The same would be true if Andrew Baker bequeaths property to James Thorpe upon trust to add income to principal for fifty years and to pay the accumulated fund to the issue of John Stiles then in being.

In England at common law, if the interests of the beneficiaries were certain to vest within the period of the Rule Against Perpetuities and the accumulation was certain to cease at or before the time that such interests vested, a provision for accumulation was valid.\footnote{Thellusson v. Woodford, 11 Ves. Jr. 112, 32 Eng. Rep. 1030 (1805); 1 Scott, Law of Trusts, §62.11.} If John Stiles bequeaths property to James Thorpe upon trust to add income to principal "during the lives of all my issue living at the time of my death and for twenty-one years thereafter and to pay the accumulated fund to my issue then living," the provision for accumulation is valid at common law. Because the English law of
accumulations became statutory in 1800, there are few precedents as to the common-law rules, but it would seem that, so long as the interests of the beneficiaries were certain to vest within the period of the Rule Against Perpetuities, the fact that a provision for accumulation might operate for longer than that period did not invalidate it.\textsuperscript{477} If Andrew Baker bequeathed property to James Thorpe upon trust "for the children of John Stiles, income to be added to principal for thirty years and the accumulated fund then to be paid to such children, their executors, administrators and assigns," it would seem that the provision for accumulation was valid. Such a provision did not tie up property for longer than the period of the Rule because, under English law, the beneficiaries could compel termination of the trust as soon as they were ascertained and of age, even though the accumulation was incomplete.\textsuperscript{478}

As has been seen, in this country the beneficiaries of a trust cannot always compel its termination even though they are all in being, ascertained, and of full age.\textsuperscript{479} Consequently, a provision for accumulation ties up property here although the interests of the beneficiaries are vested. That being so, the American courts have developed a rule corollary to the Rule Against Perpetuities known as the Common-Law Rule Against Accumulations. Under this rule, whether or not the interests of the beneficiaries are vested, a provision for accumulation is wholly void if the accumulation may possibly continue for longer than the period of the Rule Against Perpe-


\textsuperscript{478} Saunders v. Vautier, Cr. & Ph. 240, 41 Eng. Rep. 482 (1841); Part Two, note 452 supra.

\textsuperscript{479} Part Two, notes 455, 456, 457, supra.
The Common-Law Rule Against Accumulations has a partial exception in the case of charities. If the interest of a charitable beneficiary is vested, a provision for an accumulation in its favor which may continue longer than the period of the Rule Against Perpetuities is not void, but a court of competent jurisdiction may shorten the period of accumulation. 481

B. THE MICHIGAN STATUTES

Chapter 62 of the Michigan Revised Statutes of 1846 provided:

"Sec. 37. An accumulation of rents and profits of real estate, for the benefit of one or more persons, may be directed by any will or deed sufficient to pass real estate, as follows:

"1. If such accumulation be directed to commence on the creation of the estate out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority:

"2. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it shall com-


481 St. Paul's Church v. Attorney-General, 164 Mass. 188, 41 N.E. 231 (1895); Gray, Rule Against Perpetuities, 3rd ed., §678 (1915); 3 Scott, Law of Trusts, §401.9 (1939); Property Restatement, §442 (1944); Leach & Tudor, "The Common Law Rule Against Perpetuities," 6 American Law of Property, §24.42 (1952). This seems to have been the rule in England at one time. Harbin v. Masterman, L.R. 12 Eq. 559 (1871). Now, however, where a vested interest is given to a charity, subject to a provision for accumulation, the provision for accumulation is void and the charity takes the principal at once. Wharton v. Masterman, [1895] A.C. 186.
mence within the time in this chapter permitted for the vesting of future estates, and during the minority of the persons for whose benefit it is directed, and shall terminate at the expiration of such minority.

“Sec. 38. If in either of the cases mentioned in the last preceding section, the direction for such accumulation shall be for a longer time than during the minority of the persons intended to be benefited thereby, it shall be void as to the time beyond such minority; and all directions for the accumulation of the rents and profits of real estate, except such as are herein allowed, shall be void.

“Sec. 39. When such rents and profits are directed to be accumulated for the benefit of infants entitled to the expectant estate, and such infants shall be destitute of other sufficient means of support and education, the chancellor, upon the application of their guardian, may direct a suitable sum out of such rents and profits to be applied to their maintenance and education.

“Sec. 40. When in consequence of a valid limitation of an expectant estate, there shall be a suspense of the power of alienation, or of the ownership, during the continuance of which the rents and profits shall be undisposed of and no valid direction for their accumulation is given, such rents and profits shall belong to the person presumptively entitled to the next eventual estate.”

Chapter 63 of the Michigan Revised Statutes of 1846 provides:

"Sec. 11. Express trusts may be created for any or either of the following purposes: - - -

4. To receive the rents and profits of lands, and to accumulate the same for the benefit of any married woman, or for either of the purposes and within the limits prescribed in the preceding chapter." 483

In *St. Amour v. Rivard*, 484 a case involving the will of a testator who died in 1841, the Court stated that, at common law, a provision for accumulation for longer than the period of the common-law Rule Against Perpetuities would be wholly void.

*Toms v. Williams* 485 involved the will of a testatrix who died in 1876 owning land which was subject to a forty-year lease, given in 1854, which required the lessor to pay for buildings erected by the lessee at the expiration of the term in 1894 or to grant a renewal lease for an additional forty years. The will devised this and other land and also personal property to trustees (1) to set aside annually until 1894 $5,000 of the income as a sinking fund to pay for the buildings, (2) to accumulate the rest of the income until the expiration of the minority of the youngest of John R., Gershom M. and Mary J. Williams, (3) to pay over such accumulation and subsequently accruing income to these three persons after the youngest was of age, (4) to pay for the buildings in 1894, and then to transfer the entire corpus of the trust to the three persons. John R. Williams came


484 2 Mich. 294 at 299-300 (1852), Part Two, note 39 supra. The case did not involve an accumulation, so the language is dictum.

485 41 Mich. 552, 2 N.W. 814 (1879).
of age before the death of the testatrix, Gershom M. Williams did so in 1878, and Mary J. Williams would do so in 1881. The Court held that the interests of John R., Gershom M., and Mary J. Williams vested immediately upon the death of the testatrix and that both provisions for accumulation were valid. The opinion states that the Michigan accumulation statutes had no application to accumulations of income of personal property, and that directions for such accumulations limited to lives in being and twenty-one years are valid. Rejecting New York decisions to the contrary, the Court held that our statutes permitted an accumulation of the rents and profits of land for the benefit of any number of minors until the youngest came of age. Likewise, rejecting New York decisions to the contrary, the Court held that our statutes did not invalidate provisions for accumulations to pay off what amounted to an encumbrance on the trust property.

In Wilson v. Odell, a will devised land and personalty to trustees (1) to pay an annuity of $1500 to the testator's wife for her life, (2) to pay annuities of $600 for or to each of his children while under fourteen and $1,000 thereafter for life, (3) to continue the children's annuities to their children until the youngest was of age, (4) to transfer the corpus to the children's children after all the children were dead and the youngest of their children was of age. The Court held that the limitation of the principal violated the statutes prohibiting suspension of the absolute power of alienation and

that, as the annuities given to the testator's children would not consume the entire income, the direction as to them was for an accumulation which, under our accumulation statutes, could not last beyond the time when the youngest of the testator's children came of age. This decision illustrates the fact that, whereas an accumulation which violates the Common-Law Rule Against Accumulations is wholly void, an accumulation for a minor which violates the statutes because it is to extend beyond minority is void only as to the excess.

*Palms v. Palms* 490 involved a will which devised land and other property to trustees to pay the income to the testator's two children for life and then to transfer the principal to their children as each came of age. A codicil directed the trustees to treat royalties under mineral leases as principal during the minority of testator's grandchildren "now living." The Court observed that if this codicil directed an accumulation of the rents and profits of land, it would be void under the statutes because it was to commence at once but might be for the benefit of persons not yet in being. It held, however, that the mineral royalties were not rents and profits but the proceeds of sales of iron ore.

In *Eldred v. Shaw*, 491 land and sheep were devised to a trustee for a grandson with directions to apply only so much of the income as was necessary to the support, education, and maintenance of the beneficiary during minority, "and, in the case of the death of my said grandson without heirs by his body begotten, the lands


491 112 Mich. 237, 70 N.W. 545 (1897), Part One, note 98 supra.
with all its increases and accretions I give, devise and bequeath” to adult children of the testator. It was held that the grandson took an estate tail, subject to trust during minority, which, by operation of the fee tail statute,\footnote{492 Part One, note 84 supra.} became a fee simple subject to a contingent limitation (shifting executory interest) on death without issue. The Court decided that the provision for accumulation of surplus income was valid under the accumulation statutes and that the accumulated fund should be held on trust for the life of the grandson, he to receive the income and the principal to go with the land. In reaching the latter conclusion, the Court seems to have overlooked the fact that the statutes permitted accumulations of the rents and profits of the land only for the benefit of minors. An accumulation during the minority of a child for the benefit of an adult is not permitted by the statutes. The New York decisions make it clear that accumulations are invalid unless for the exclusive benefit of the persons during whose minority they are made, that the minor is entitled to the whole accumulation on coming of age, and that a limitation giving it to another on a contingency is void.\footnote{493 Whiteside, “Statutory Rules: Perpetuities and Accumulations,” 6 AMERICAN LAW OF PROPERTY, §25.110 (1952); PROPERTY RESTATEMENT, §445 (1944). The Restatement and a 1945 amendment to the New York statute [Laws 1945, c. 558, Real Prop. Law, §61a] provide that a gift to others of the accumulated fund on death of the minor before reaching twenty-one is valid.}

In Hull v. Osborn,\footnote{494 151 Mich. 8, 113 N.W. 784 (1908). Cf. Hunter v. Hunter, 160 Mich. 218, 125 N.W. 71 (1910).} the residue of an estate was devised to testator’s two granddaughters, $10,000 to be paid to each on reaching twenty-five, $10,000 on reaching thirty, $10,000 on reaching thirty-five, $10,000 on reaching forty, and the balance of half the residue on reach-
ing forty-five. The will provided that if either died before reaching forty-five, without issue, the unpaid portion of her share should pass to the other and that if both so died, all unpaid should pass to persons to be ascertained at that time. It was held that the entire interests of the granddaughters vested on the death of the testator, subject to being divested by death without issue before reaching forty-five, and that the provisions for postponement of payment did not violate "the rule as to perpetuities or accumulations." The Court thought that these provisions postponed only payment of principal and that the granddaughters were entitled to the entire income as it accrued.

In Post v. Grand Rapids Trust Co.,\(^4\) half the residue of an estate, consisting wholly of personalty, was bequeathed to trustees to pay from the income not to exceed $300 per month to testatrix's daughter Fannie for life and then to her issue until her youngest child living at the testatrix's death reached twenty-five, then to transfer the principal and accumulated surplus income to the issue of Fannie. When one of her two children was a minor and the other was of age, Fannie and her children petitioned for payment of more than $300 a month (the total income being some $450 per month) to pay for the education of the children. A decree ordering such payment was reversed insofar as it related to the child who was of age. The Court ruled that, as the accumulation statutes related only to the rents and

\(^4\) 255 Mich. 436, 238 N.W. 206 (1931). In Hay v. Hay, 317 Mich. 370, 26 N.W. (2d) 908 (1947), personalty was bequeathed to a trustee to pay certain life annuities and accumulate the surplus income until twenty-one years after the death of the last survivor of the grandchildren of the testator who were living when he died, then to pay the accumulated fund to his heirs, to be determined at that time. There were seven grandchildren living when the testator died. The provisions were treated as valid.
profits of land they had no application and, hence, that the direction to accumulate for a period measured by lives in being was valid. It held, nevertheless, that a court may direct advancements from an accumulation for the education and support of minor beneficiaries.\(^{496}\)

The testator in *Loomis v. Laramie* \(^{497}\) devised the residue of his estate, consisting of land and personalty, to trustees to accumulate the income for twenty years and then to transfer the principal and accumulated income to five named persons "and the heirs of their body forever." The Court, without mentioning the accumulation statutes, held that the trust was void because it suspended the absolute power of alienation for a period not based on lives in violation of the statutes then in force and that the five persons were entitled to the residue immediately and absolutely. **The same result should have been reached if the accumulation statutes had been considered and applied.**

*In re Dingler's Estate* \(^{498}\) involved a devise of an estate to trustees to pay the income to testatrix's twin granddaughters in quarterly instalments until they reached thirty and then to transfer the principal to them "or to the survivor unless one of said granddaughters shall die leaving issue surviving." It was held that the provision for payment of the income in quarterly instalments was not a direction to accumulate because it did not involve adding income to principal.

\(^{496}\) Citing *Knorr v. Millard*, 52 Mich. 542, 18 N.W. 349 (1884), which reached the same result on the ground that, as Rev. Stat. 1846, c. 62, §39 [Part Two, note 482 supra] expressly authorizes such advancements from accumulations of the rents and profits of land, a court of equity should have power to direct them from accumulations of the income from personalty. Accord: *Knorr v. Millard*, 57 Mich. 265, 23 N.W. 807 (1885).

\(^{497}\) 286 Mich. 707, 282 N.W. 876 (1938).

In re Mac Donell's Estate 499 concerned a devise of
land and a small amount of personalty to trustees to pay
the testator's son Donald $200 a month until he reached
thirty-five and then to transfer the corpus of the trust
to him. Before reaching thirty-five, Donald sued to
compel the trustees to pay him the entire income. The
trustees contended that the accumulation statutes were
inapplicable because the will did not expressly direct
accumulation and because it conferred upon the trustees
discretionary power to pay Donald more than $200 a
month in the event of emergency. A decree for the
trustees was reversed, the Court holding that the
accumulation statutes applied to a mixed disposition of land
and personalty and that an implied direction to accumu­
late was governed by them. As there was no other bene­
ficiary, it would seem that Donald would have been en­
titled to compel termination of this trust under the rule
in Bennett v. Chapin. 500 He did not seek to do so.

Sections 37 and 38 of Chapter 62 of the Revised Sta­
tutes of 1846 were amended by Act 227, Public Acts
of 1949, to read as follows:

"Sec. 37. An accumulation of rents and profits of
real estate, or of the profits or income of personal estate,
or both, for the benefit of 1 or more persons, may be
directed by any will or deed sufficient to pass real or
personal estate, as follows:

"First. If such accumulation be directed to commence

499 325 Mich. 449, 39 N.W. (2d) 32 (1949). But see In re Peck's
Estate, 323 Mich. 11 at 20-21, 34 N.W. (2d) 533 (1948). An accumu­
lation of the income from a mixed mass of property consisting of land
worth $40,000 and personalty worth $40,000,000, to last until certain
children reached twenty-five, was involved in Dodge v. Detroit Trust
Co., 300 Mich. 575, 2' N.W. (2d) 509 (1942). Its validity was not
determined.

500 77 Mich. 526, 43 N.W. 893 (1889), Part One, note 611, Part Two,
note 466, supra. See: PROPERTY RESTATEMENT, §441, Comment c.
(1944).
on the creation of the estate out of which the rents and profits or income are to arise, it must be made for the benefit of 1 or more minors then in being, and terminate at the expiration of their minority.

"Second. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits or income of real estate or the income of personal estate, or both, are to arise, it shall commence within the time in this chapter permitted for the vesting of future estates, and during the minority of the persons in being at the creation thereof, for whose benefit it is directed, and shall terminate at the expiration of such minority.

"Sec. 38. If in either of the cases mentioned in the last preceding section, the direction, in any will or deed heretofore or hereafter attested, executed or delivered, for such accumulation shall be for a longer time than during the minority of the persons intended to be benefited thereby, or for a longer time than 33 years from the death of the maker of any will, it shall be void as to the time beyond said minority or said 33 years; and all directions for the accumulation of the rents and profits of real estate, or of the profits or income of personal estate, except such as are herein allowed, shall be void."

These amendments extended the restrictions imposed by the sections, which had theretofore applied only to accumulations of income from land and mixed property, to accumulations of income of personalty. Moreover, they increased the stringency of the restrictions by requiring that accumulations be for the benefit of minors in being at the creation of the estate, which means at the effective date of the deed or will directing the ac-

If Andrew Baker devised land to James Thorpe upon trust to pay the income to John Stiles for life, then to accumulate the rents and profits during the minority of John's eldest son, and to transfer the land and accumulation to such son at his majority, the direction to accumulate would have been valid under the statutes in their original form whether or not John's eldest son was in being when the testator died. The amendments to Section 37 would make it invalid unless the eldest son was in being when the testator died. This being so, the thirty-three year provision in the amendment to Section 38 could have no application. Section 37, as amended, restricted accumulations directed by will to the minority of a person in being when the testator died. Such a minority could not last for more than twenty-one years and nine months after the testator's death.

Sections 37, 38, 39, and 40 of Chapter 62, Revised

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502 Rev. Stat. 1846, c. 62, §41, Comp. Laws (1857) §2625; Comp. Laws (1871) §4108; Comp. Laws (1897) §8823; How. Stat., §5557; Comp. Laws (1915) §11559; Comp. Laws (1929) §12961; Mich. Stat. Ann., §26.41; Comp. Laws (1948) §554.41, provides: "The delivery of the grant, where an expectant estate is created by grant; and where it is created by devise, the death of the testator shall be deemed the time of the creation of the estate." Mr. Thomas G. Long of the Detroit Bar thinks that what must have been meant was in being "at the commencement of the accumulation" rather than "at the creation of the estate" in the technical statutory sense of that term. "Perpetuities and Accumulations: Recent Legislative Acts Explained," 17 DETROIT LAWYER 193 (1949). Mr. Long's suggestion tends to explain the otherwise meaningless 33-year provision in Section 38.


504 Professor Whiteside thought that this provision was intended to validate a direction in a will to accumulate for a period in gross of thirty-three years, unconnected with minorities. "Statutory Rules: Perpetuities and Accumulations," 6 AMERICAN LAW OF PROPERTY, §25.112. If so, it certainly was not well drafted to accomplish this purpose. See note 502 supra.
Statutes of 1846, as amended,\textsuperscript{505} were repealed, as to wills of persons dying after the effective date of the repealing acts and deeds delivered thereafter, by Acts 6 and 7, Public Acts of 1952, which became effective on September 18, 1952. As a result of these repeals, there are now no restrictions on accumulations in Michigan except the Common-Law Rule Against Accumulations.\textsuperscript{506} It should be noted, however, that the repealing acts apply only to accumulations directed by wills or deeds becoming effective after September 18, 1952. The 1949 amendments, which extended the prior statutory restrictions on accumulations to personal property and increased their stringency, are still in force as to accumulations directed by wills or deeds which became effective before that date. Moreover, the 1949 amendments expressly purported to govern accumulations directed by deeds or wills which became effective at any time before the amendments were enacted. If this provision for retroactive application is constitutionally valid, the 1949 amendments make void many directions for accumulation which were valid when the deed or will containing them became effective, such as that involved in \textit{Post v. Grand Rapids Trust Co.}\textsuperscript{507}

\textsuperscript{505} Part Two, notes 482, 501, \textit{supra}.

\textsuperscript{506} Part Two, note 480 \textit{supra}. The existence of this rule was recognized in \textit{St. Amour v. Rivard}, 2 Mich. 294 at 299-300 (1852), Part Two, notes 39, 484, \textit{supra}; \textit{Toms v. Williams}, 41 Mich. 552, 2 N.W. 814 (1879), Part Two, note 485 \textit{supra}.

\textsuperscript{507} Part Two, note 495 \textit{supra}. Mr. Thomas G. Long of the Detroit Bar thinks that, if the 1949 amendments were really intended to be retroactive, they were unconstitutional to that extent because they would disturb vested interests. \textquote{Perpetuities and Accumulations: Recent Legislative Acts Explained,} 17 \textit{Detroit Lawyer} 193 (1949). It is to be hoped that Mr. Long is correct, but the question is far from being free of doubt. If Andrew Baker died in 1948 bequeathing $100,000 to James Thorpe upon trust to pay $100 a month to Lucy Baker for life and to accumulate the surplus income until her death, then to pay over the accumulated fund to John Stiles, his executors,
Trusts created by employers as part of a stock bonus plan, pension plan, disability or death benefit plan, or profit-sharing plan, for the benefit of employees\(^{508}\) and trusts or funds established by cemetery corporations for perpetual care of graves\(^{509}\) are expressly excepted by statute from legal restrictions on the duration of accumulations. It will be recalled that charitable trusts are excepted by statute from the Rule Against Perpetuities.\(^{510}\)

As the statute does not expressly except them from the Common-Law Rule Against Accumulations, it would seem that that rule should be applied to charities here as it is applied in other jurisdictions. That is, a provision for accumulation in a limitation in favor of charity which may operate for longer than the period of the Rule Against Perpetuities is valid, but a court of competent jurisdiction may shorten the period of accumulation.\(^{511}\)

administrators or assigns, the amendments would not divest any interest; they would merely entitle John Stiles to demand the surplus income during the life of Lucy Baker.


\(^{510}\) Part Two, note 421 supra.

\(^{511}\) Part Two, note 481 supra.